U.S. Department of Justice

Immigration and Naturalization Service

DD

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

[redacted]

Date: MAY 2 4 2000

IN RE: Applicant: [redacted]

APPLICATION: [redacted]

IN BEHALF OF APPLICANT:

[redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the District Director, New Orleans, Louisiana, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on December 15, 1963, in Kfarsghab, Lebanon. The applicant's father, [redacted], was born in Lebanon in 1940 and became a naturalized U.S. citizen on June 18, 1980 under the name [redacted]. The applicant's mother, [redacted] was born in 1937 in Lebanon and never had a claim to U.S. citizenship. The applicant's parents married each other in Lebanon on January 1, 1959. The applicant was lawfully admitted for permanent residence on November 14, 1970. He claims eligibility for a certificate of citizenship under § 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The district director determined the record failed to establish that the applicant met the requirements in that he failed to establish that there had been a legal separation of his parents as held in Matter of H--, 3 I&N Dec. 742 (BIA 1949). The district director then denied the application accordingly.

On appeal, counsel states that a written brief will be forthcoming in 30 days. More than 30 days have elapsed since the appeal was filed on March 16, 2000 and no additional documentation has been included in the record. Therefore, a decision will be rendered based on the present record.

Section 321(a). A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

> (1) The naturalization of both parents; or
>
> (2) The naturalization of the surviving parent if one of the parents is deceased; or
>
> (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
>
> (4) Such naturalization takes place while said child is under the age of 18 years; and
>
> (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

In Matter of Fuentes-Martinez, Interim Decision 3316 (BIA 1997), the Board stated the following; "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of § 321(a). We now hold that, as long as all the conditions specified in § 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

The record contains a notarized letter signed by [redacted] stating that he is the applicant's biological father and was the full legal custodian of the applicant for all purposes. Further, in a document entitled Examination Under Oath of [redacted] states that the applicant's natural mother [redacted] left him in September 1976 and he did not live with her again until 1983. [redacted] alleges that all five of his children remained in his care and [redacted] did not have any contact with the children. This assertion is unsupported by independent corroborating evidence.

Secondary school records for the applicant between 1977 and 1981 reflect that the names of [redacted] and [redacted] are listed as parent or guardian. This fact contradicts [redacted] statements in his Examination Under Oath."

The record contains a notarized statement from [redacted], the brother of [redacted] who states that [redacted] lived with him in Easton, Pennsylvania from 1978 to the latter part of 1983 and often went to visit her son, [redacted], who was residing with his aunt in Providence, Rhode Island. [redacted] statement contradicts [redacted] statement that all five children lived with him and [redacted] never had any contact with any of the children. [redacted] states that [redacted] never returned to live with her husband which contradicts [redacted] statement that [redacted] returned to live with him [redacted] in 1983.

The record does not contain the stipulated letter from [redacted] regarding whether the divorce code of the Commonwealth of Pennsylvania provides a mechanism for a formal court action to establish "legal separation."

The record establishes that the applicant's father became a naturalized U.S. citizens prior to the applicant's 18th birthday and the applicant was residing in the United States as a lawful permanent resident when the applicant's father naturalized.

However, in order for the applicant to receive the benefits of § 321 of the Act, there must have been a legal separation of the parents. Matter of H--, 3 I&N Dec. 742 (C.O. 1949), held that the term "legal separation" means either a limited or absolute divorce obtained through judicial proceedings, and where the actual parents of the child fail to establish there was a legal separation through judicial proceedings, there could be no "legal separation," of such parents. Therefore, the applicant's father was not legally separated from the applicant's mother when his father naturalized. If there was no legal separation, the naturalization of one parent under such circumstances does not result in derivation even though

other requisite conditions are satisfied. See INTERP 320.1(a)(6).

There is no provision under the law by which the applicant could have automatically acquired U.S. citizenship through his father's naturalization because he was not in the legal custody of his father following a legal separation. Therefore, the district director's decision will be affirmed. This decision is without prejudice to the applicant seeking U.S. citizenship through normal naturalization procedures.

ORDER: The appeal is dismissed.